



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
345 Middlefield Road
Menlo Park, California 94025

In Reply Refer To:
U.S. Geological Survey
Attention: Judy Cearley
345 Middlefield Road
MS 955, Room M2214
Menlo Park, California 94025

March 11, 2019

Mr. Chris Saeger
Western Values Project
704C East 13th Street, Suite 568
Whitefish, Montana 59937
Transmitted by electronic mail: csaeger@westernvaluesproject.org

Re: U.S. Geological Survey (USGS) Freedom of Information Act (FOIA) Tracking #
USGS-2018-00104 – Final Response

Dear Mr. Saeger:

This letter is our final response to your Freedom of Information Act (FOIA) request dated March 16, 2018. Initially, you requested the following information:

1. Request for access to and copies of all correspondence, including but not limited to letters, texts, emails, and faxes, to or from the following United States Geological Survey officials from December 11, 2017 to December 22, 2017:
 - Acting Director William Werkhesier
 - Deputy Acting Director David Applegate
 - Chief of Staff Judy Nowkowski
 - Associate Director, Communications and Publishing, Betsy Hildebrandt
 - Murray Hitzman
 - Larry Meinert
2. Request access to and copies of all correspondence, including but not limited to letters, texts, emails, and faxes, to or from the above list of USGS officials and the below list of Department of Interior officials at any point since December 9, 2017:

- Secretary Ryan Zinke
- Deputy Secretary David Bernhardt
- Todd Willens
- Steven Howke
- Downey Magallanes
- Andrea Travnicek
- Tim Petty
- Austin Ewell
- Ryan Nichols
- Vincent De Vito
- Caroline Boulton
- Leila Getto
- Joe Balash
- Heather Swift
- Laura Rigas

On April 26, 2018, after a discussion with Mr. Georg-Andreas Pogany, from the USGS FOIA office, you limited the scope of your request to the following information:

1. The topic of this FOIA, for both portions of the request: all communications about the resignation of Murray Hitzman and the retirement of Larry Meinert.
2. Exclude all CCed and BCCed emails.
3. Exclude all email attachments.
4. For the second portion of the request: all communications between USGS officials and the list of Department of Interior officials from December 7, 2017, to December 27, 2017.

On September 26, 2018, we provided you with our first interim release, consisting of 550 pages of records we previously released to another requester, the Investigative Fund, assigned tracking numbers 2018-00062 and 2018-00065.

We have enclosed one portable document format (PDF) record, consisting of 88 pages, which is being released to you in part. We removed duplicate records as we previously released to you under FOIA assigned number 2018-00062. We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure; therefore, portions of the records are protected from release by FOIA Exemption (b)(6) ("Exemption 6"). The exempted information will not be released and has been redacted from the attached records.

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."5 U.S.C. § 552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly

unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, “the only relevant public interest” to consider under the exemption is “the extent to which the information sought would ‘she[d] light on agency’s performance of its statutory duties’ or otherwise let citizens ‘know what their government is up to.’ The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of the direct email address of then Deputy Secretary of the U.S. Department of the Interior, as the information customarily not released to the public; and a personal home phone number. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency’s statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute unwarranted invasion of the privacy of the individuals and we are withholding the information under Exemption 6.

Additionally, we are providing you with records that we previously released to other FOIA requesters, and the records may provide you with information similar to your request. We are releasing 198 pages of records that we previously released to the Los Angeles Times, assigned tracking number 2018-00070; Investigative Fund, tracking numbers 2018-00087, 2018-00092; and the Democratic National Committee, tracking number 2018-00104.

Tracking number 2018-00070

1. Any emails and / or correspondence sent to or from the following individuals, between December 1, 2017 and January 18, 2018, regarding USGS information releases involving mineral deposits and energy surveys. Specifically, any correspondence (including emails) that discuss/describe a recent change to a longstanding policy where only four individuals would review or have access to the mineral deposit and energy surveys. Additionally, any emails and / or correspondence, sent to or from the following individuals, that discuss or describe the ethics of the policy change, particularly regarding the ability of people to view or access potentially proprietary information. To exclude email attachments.

- Dr. Murray Hitzman, former Associate Director of Energy and Minerals
- Mr. William Werkheiser, Director (Acting)
- Dr. David Applegate, Deputy Director (Acting)
- Ms. Judy Nowakowski, Chief of Staff
- Mr. Craig Robinson, Associate Director, Office of Science Quality and Integrity (OSQI)

- Mr. Rama Kota, Deputy Director, OSQI
 - Ms. Betsy Hildebrandt, Associate Director, Office of Communications and Publishing (OCAP)
 - Ms. Leslie Jones, Deputy Associate Director, OCAP
 - Ms. Anne-Berry (AB) Wade, USGS Press Officer, OCAP
2. A copy of Dr. Hitzman's Resignation Letter.
 3. Any emails sent from Ms. Heather Swift, Department of the Interior, Press Secretary, to Ms. Hildebrandt, Ms. Jones, or Ms. Berry, between December 1, 2017 and January 18, 2018. To exclude email attachments.

Tracking number 2018-00087

Any and all correspondence or communication to or from David Applegate and William Werkheiser and the Office of the Secretary of the interior, specifically Heather Swift, regarding Adam Federman's January 10 and 11, 2018 email requests to interview USGS Associate Director David Applegate and Acting Director William Werkheiser about the USGS's Fundamental Science Practices. Date range for the request is January 10 to January 12, 2018.

Tracking number 2018-00092

1. Any and all correspondence or communication to or from USGS Acting Deputy Director David Applegate and Andrea Travnicek, Deputy Assistant Secretary for Water and Science, from December 15, 2017 to December 18, 2017. This should include any and all emails exchanged on Saturday, December 16 and Sunday, December 17, 2017.
2. Any and all correspondence or communication to or from USGS Acting Director Bill Werkheiser and Andrea Travnicek, Deputy Assistant Secretary for Water and Science, from December 15, 2017 to December 18, 2017. This should include any and all emails exchanged on Saturday, December 16 and Sunday, December 17, 2017.

Tracking number 2018-00104

Emails, including attachments, sent or received by Mr. William Werkheiser, Acting Director, David Applegate, Acting Deputy Director, and Ms. Judy Nowakowski, Chief of Staff, which reference the resignation of Murray W. Hitzman, USGS Associate Director for Energy and Minerals and the retirement of Lawrence D. Meinert, Acting Deputy Associate Director for Energy and Minerals. The timeframe from December 1, 2017 to February 28, 2018.

As a result of this final release, we have released a total of 836 pages of records to you in full or in part.

On March 19, 2018, we approved your request for a fee waiver.

Judy Cearley, U.S. Geological Survey, Government Information Specialist is responsible for this partial denial. Ms. Jennifer Heindl, Attorney-Advisor, U.S. Department of the Interior, in the Office of the Solicitor was consulted.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this communication. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the USGS's response is in error. You must also include with your appeal copies of all correspondence between you and USGS concerning your FOIA request, including your original FOIA request and USGS's response. Failure to include with your appeal all correspondence between you and USGS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240
Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, Maryland 20740-6001
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1-877-684-6448
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

You also may seek dispute resolution services from our FOIA Public Liaison, Mr. Brian May, USGS Freedom of Information Act (FOIA) Officer, at the following address:

U.S. Geological Survey
Department of the Interior
5522 Research Park Drive
Baltimore, Maryland 21228
Telephone: (443) 498-5521
Fax: (443) 498-5510
Email: foia@usgs.gov

This completes our response under your request. If you have any questions about our response to your request, you may contact me by phone at (650) 329-4035, by email at foia@usgs.gov, or by mail at 345 Middlefield Road, MS 955, Room M2214, Menlo Park, California 94025.

Sincerely,

Judy Cearley
U.S. Geological Survey
Government Information Specialist

Enclosures (5 PDFs, 286 pages):

2018-00114 – Combined Emails_Redacted (88 pages)
2018-00070 – Combined Emails_Redacted (160 pages)
2018-00087 – AB.Wade Collection (6 pages)
2018-00092 – D.Applegate Collection (1 page)
2018-00104 – Combined Emails_Redacted (31 pages)